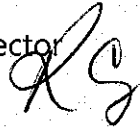


To: The Honorable Mayor and City Council

From: Ruby C. Johnson, Purchasing Director  
Purchasing Department



Date: February 28, 2011

RE: **A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI, AS LANDLORD AND OLETA PARTNERS, LLC, AS TENANT, FOR THE PREMISES KNOWN AS "BISCAYNE LANDING"; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO EFFECTUATE THE TERMS OF THE LEASE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES**

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**RECOMMENDATION**

Staff is recommending that the Mayor and Council authorize the City Manager to execute a lease agreement with Oleta Partners, LLC in accordance with RFP 43-10-11 (A & B) for the Re-development of the Biscayne Landing Property.

**BACKGROUND**

The negotiation team has determined that Oleta Partners, LLC is a qualified developer and has presented a viable project for the Biscayne Landing site. The negotiation team held numerous negotiation meetings and community workshops resulting in presenting a lease that is within the best interest of the City of North Miami.

Outside Counsel has provided a summary of significant terms for review. Staff is requesting authorization to execute the attached lease agreement and move forward with the development of the Biscayne Landing property.

**ATTACHMENTS**

Resolution  
Summary of Lease Agreement

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI, AS LANDLORD AND OLETA PARTNERS, LLC, AS TENANT, FOR THE PREMISES KNOWN AS "BISCAYNE LANDING"; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO EFFECTUATE THE TERMS OF THE LEASE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.**

WHEREAS, on June 2, 2011, the City of North Miami ("City") issued *Request for Proposal #43-10-11 (A) for the Redevelopment of the Biscayne Landing Site for the City of North Miami, Florida*, as amended ("RFP-A"), representing the first phase in the City's efforts to seek a qualified developer to develop or purchase the approximate 183.85 acre-site known as Biscayne Landing ("Biscayne Landing"); and

WHEREAS, on June 29, 2011, the City issued *Request for Proposal #43-10-11 (B) for the Redevelopment of the Biscayne Landing Project Stage 2* ("RFP-B"), representing the second phase in the City's efforts to seek a qualified developer to develop or purchase Biscayne Landing; and

WHEREAS, Oleta Partners, LLC, a Florida Limited Liability Company ("Developer"), was the sole respondent to both RFP-A and RFP-B; and

WHEREAS, on October 25, 2011, the Mayor and City Council adopted Resolution Number 2011-141, authorizing the City Manager, the City Attorney, and their designees to negotiate the lease or sale of the Biscayne Landing project site with the Developer; and

WHEREAS, the City is responsible for the continued operation, repair and maintenance of the Biscayne Landing site until such time that the City enters into a lease or sale agreement; and

WHEREAS, negotiations between the City and Developer has culminated into a lease agreement which the Mayor and City Council desire to move for execution, in accordance with

the direction provided to City Administration at the duly noticed, public meeting of February 28, 2012.

**NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1. Authorization to Execute Lease Agreement.** The Mayor and City Council of the City of North Miami, Florida, hereby approve the execution of a Lease agreement between the City of North Miami, as landlord and Oleta Partners, LLC, as Tenant, for the premises known as "Biscayne Landing".

**Section 2. Authorization of City Manager.** The City Manager is hereby authorized to do all things necessary to effectuate the terms of the Lease Agreement.

**Section 3. Effective Date.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, this \_\_\_\_\_ day of February, 2012.

\_\_\_\_\_  
ANDRE D. PIERRE, ESQ.  
MAYOR

ATTEST:

\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
ROLAND C. GALDOS  
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Vote:**

Mayor Andre D. Pierre, Esq.	_____ (Yes)	_____ (No)
Vice Mayor Jean R. Marcellus	_____ (Yes)	_____ (No)
Councilperson Michael R. Blynn, Esq.	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)

SUMMARY OF TERMS  
BISCAYNE LANDING  
DRAFT LEASE  
February 23, 2012

Premises	Approximately 183.8 acres of land in the City of North Miami, in Miami-Dade County, Florida, known as "Biscayne Landing"
Landlord	The City of North Miami
Tenant	Oleta Partners LLC, owned by Millennium LLC, The Swerdlow Group, and The LeFrak Organization
Lease Term	99 years, starting when parties have signed the Lease and Landlord has delivered possession (" <u>Commencement Date</u> ")
Renewal Options	One option to renew for an additional 99 years; annual renewal Fixed Rent to be reset at 7.5% of the appraised fair market value at the time of exercise of the option to renew
Expenses	"Triple net" lease. Tenant pays all taxes, insurance, construction and repairs, expenses, and responsibilities, with a few exclusions for items personal to Landlord. Tenant controls all operations, leasing, tax protests.
Condition of Premises	"As-is" at Commencement Date, no representations or warranties. There is no due diligence period.
Environmental:	<p>Landfill Closure</p> <ol style="list-style-type: none"> <li>1. <u>Groundwater remediation</u>: City will retain responsibility for the design and construction of the groundwater remediation system (currently underway with CH2M Hill); City commits in Lease to cooperate with Tenant on placement of pipes, extraction wells, construction activities to facilitate development; Project Coordination Team meets monthly; Tenant can observe CH2M Hill work and advise City PE of any concerns, City PE will handle using professional judgment); Tenant to assume all other groundwater obligations under the CLCP and Landfill closure permit (monitoring, stormwater system).</li> <li>2. <u>Landfill closure</u>: Tenant to assume all landfill obligations under the CLCP and Landfill closure permit (grading, capping, methane control)</li> </ol> <p>General</p> <p>Tenant assumes responsibility for all existing and new environmental conditions</p>
Grant Agreement with MDC for Landfill Closure	Grant Agreement provides funding for the closure and remediation of the landfill. \$31,027,000 was originally allocated to the Site for both closure and remediation. The Schedule of Values shows a remaining balance of approximately \$14MM for the groundwater remediation and \$10MM for Landfill closure/capping. All funds are disbursed pursuant to Grant procedures (inspections, certifications, back-up documents, releases of lien). The Lease provides that the City will request/disburse funds for work done pursuant to and in compliance with the Grant Agreement.
Materials on Premises	Landlord will assign rights in construction material and equipment detailed in an inventory list that is on the Premises on the Commencement Date, but excluding the fusing machine, crane, and generator
Initial Payment	On execution of the Lease, the Tenant pays Landlord \$19 Million Dollars (\$17,500,000 initial payment, \$1,500,000 first year's rent).

Payment of back Real Estate Taxes	On execution of the Lease, the Tenant pays outstanding real estate taxes
Base (Fixed) Rent	<p><u>First Year:</u> \$1,500,000.00 year, paid in advance on the Commencement Date.</p> <p><u>Second through Fifth Years:</u> Rent will be completely abated unless and until Tenant completes 500,000 square feet of Improvements, at which point a reduced rent of \$200,000 per year will be due.</p> <p><u>Sixth Year through the end of the Term:</u> Beginning with the sixth year, the Fixed Rent again goes back to \$1,500,000 per year.</p>
Fixed Adjustments to Base Rent	On each tenth anniversary of the Commencement Date throughout the term of the lease, the Base Rent will be increased by \$150,000.00. There will be no indexed (e.g., CPI) increases.
*Participation Rent	<ol style="list-style-type: none"> <li>1. <i>Retail or Office Uses.</i> 1.5% of Tenant's revenue, less certain expenses</li> <li>2. <i>Short Term Rentals.</i> 1.25% of Tenant's gross revenue (senior and residential housing under 6 months)</li> <li>3. <i>Hotel.</i> 2% of Tenant's gross revenue</li> <li>4. <i>Long Term Rentals or Sales.</i> 3% of the gross revenue (condos have a \$250 per square foot minimum sales price)</li> <li>5. <i>Other Commercial Uses; Future Uses and Revenue.</i> reasonable additional Participation Rent Amendment to Lease to be agreed in good faith (same for Casino Gambling or Gaming, see section 3.12)</li> </ol> <p>(works as a hedge against inflation) *Possible Unrelated Business Income tax issue, being researched by the City's outside auditor, to be changed per the Lease if this creates a tax liability)</p>
Park Property	<p><u>Active park:</u> 7.2 acre site and 13.7 acre site to be owned and maintained by the City; Tenant will have a self-help remedy if City does not properly maintain these areas.</p> <p><u>37 acres of open space</u></p> <p><u>Community Center:</u> Tenant will build a Community Center comparable to the Gwen Margolis Center, to be owned and maintained by Tenant. Landlord will have free use of the facility at least 3 times a month</p> <p>Lake Ibis will be owned by the City, maintained by the Tenant</p>
Financing	No subordination of the Landlord's interest to any financing obtained by tenant or a subtenant. Certain Leasehold Mortgagee protections are provided to a Leasehold Mortgagee (cure rights if Tenant defaults, New Lease on termination if exercised within a set time period)
Casualty and Condemnation	Tenant is responsible for restoration after casualty (destruction) or partial condemnation. There is no termination of the Lease, and no abatement of the rent (except for condemnation of essentially all of the Premises, and then the Lease terminates) unless the casualty occurs in the last 5 years of the lease, in which case the insurance proceeds go to Landlord. Condemnation awards are made in accordance with Florida law.
Use	Tenant may use the premises for any lawful purpose in accordance with applicable zoning and other laws and regulations
Construction Rights	Tenant and subtenants may construct and alter improvements without Landlord approval, but in accordance with all zoning, building codes, Laws, permits, etc.. Landlord will cooperate where necessary by signing easements, permit applications, etc., within reasonable limitations.

Construction Obligations	<p>Tenant has 2 hard deadlines for construction:</p> <ol style="list-style-type: none"> <li>1. Initial Development must be completed by the fifth anniversary of the Commencement Date, and includes the items shown on attached exhibit A. Tenant will provide a projected Schedule of Values and timeline.</li> <li>2. The Second Stage Development must be completed by the seventh anniversary of the Commencement Date, and includes (a) substantial completion of an additional 500,000 square feet of Required Improvements and (b) completion of the Remedial Action (i.e., all portions of the Landfill closure except the groundwater remediation system, which is the City's responsibility).</li> </ol> <p>If either of the hard deadlines are not met, unless it is for good cause ("Unavoidable Delay"), the Landlord can hold Tenant in default under the Lease and subject to cure rights in any Leasehold Mortgagee, can terminate it, in which case Landlord will take back the land in its improved state (there will be non-disturbance agreements for certain qualifying subtenants). The landlord keeps the Initial Payment in any event.</p>
Construction of the Balance	<p>Except for the Initial Development and Second Stage Development, there are no hard deadlines in the Lease for construction of the balance of the improvements that will constitute the project in order to provide Tenant with needed flexibility to make the most advantageous decisions according to then current market conditions/trends. The moving force will be the financial incentive Tenant has to begin to recoup its investment; until it builds and subleases, it has no income coming in despite the approximately \$50 Million dollars (comprised of the Initial Payment of \$22MM and costs for the Initial Development of approximately \$25MM, plus carry costs, expenses for plans, professionals, etc.) it has invested in the Premises.</p>
Guaranties	<p>Due to the unusual Initial Payment, no guaranties or security deposits will be required</p>
Bonds	<ol style="list-style-type: none"> <li>1. Requires payment and performance bond to be issued prior to building permit unless waived by City Manager due to particular circumstances.</li> <li>2. Requires compliance with 255.05, Fla. Stat. (2012) for a bond for any "public work," including the Remedial Action. Requires bond to be issued prior to building permit for improvements to be located in dedicated rights of way and/or public facility easements.</li> </ol>
Transfer of Lease	<ol style="list-style-type: none"> <li>1. No transfer until Tenant's Construction Obligations (Initial Development and Second Stage Development) are completed</li> <li>2. No transfer if an Event of Default exists</li> <li>3. Any transfer must be to a Qualified Developer</li> <li>4. (Note: No payment is due to the Landlord if the Lease is transferred)</li> </ol>
Transfer of Equity Interests in Tenant	<ol style="list-style-type: none"> <li>1. No transfer until Tenant's Construction Obligations (Initial Development and Second Stage Development) are completed except to a Permitted Equity Owner</li> <li>2. No transfer if an Event of Default exists</li> <li>3. (Note: No payment is due to the Landlord if Equity Interests are transferred.)</li> </ol>
Right of First Offer	<p>(Instead of the requested Right of First Refusal)</p> <p>If Landlord decides to transfer the fee estate, Landlords will notify Tenant as to important terms on which it is willing to sell (purchase price, deposit, any</p>

	purchase money financing, timing). Tenant will need to exercise or waive the right before Landlord starts marketing.
Option to Purchase Condo parcels	<ol style="list-style-type: none"> <li>1. Option to Tenant to purchase from Landlord parcels of at least 5+ acres of the 50.6 acres designated as Phase III and IV along the eastern boundary of the Premises (not abutting Biscayne Blvd) which will be used for condo/condo conversion</li> <li>2. Subject to Landlord's commercially reasonable approval as to location and size of Option Parcel (so remaining property is not prejudiced)</li> <li>3. Exercisable after the Initial Development is completed and before the 20<sup>th</sup> Anniversary of the Commencement Date.</li> <li>4. Purchase price is adjusted to less out the value added by the Initial Development.</li> <li>5. Prior to recording of deed, covenant running with the land (or other acceptable mechanism) is to be recorded making owner responsible for environmental obligations under the CLCP and other documents as to the purchased Option Parcel.</li> <li>6. No change to Second Stage Development Landfill Closure obligation.</li> </ol>
Recourse	The Lease is nonrecourse to both parties (in a lawsuit the damages would be limited to that party's interests in the Premises, or the proceeds if sold)
2 Tiered Default System	Minor Defaults (e.g., not providing a progress report, not maintaining a building in good condition) do not risk termination of the lease; the remedy is Delay Fee or specific performance, unless specific performance is not reasonably available, in which case it can become a major default
Additional Payments to Landlord	<ol style="list-style-type: none"> <li>1. Tenant will pay up to One Million Dollars to reimburse the City for its maintenance and other costs of carrying the property and its third party professional fees incurred in connection with the lease transaction.</li> <li>2. Tenant will also reimburse the City up to \$100,000 annually for its administrative costs monitoring the Lease for the first 5 years of the lease.</li> </ol>
Transfer Taxes	All transfer taxes arising from the Lease transaction, if any, will be paid by Tenant
Subleasing	Tenant may enter into subleases without restriction. Landlord shall agree to recognize and nondisturb subtenants that satisfy reasonable objective criteria in the Lease.



**EXHIBIT A**  
**DESCRIPTION OF INITIAL DEVELOPMENT**

All in compliance with Law and applicable permits and Approvals:

1. The Storm Water Master Plan for the entire site pursuant to applicable permits including FDEP, DPERA, and SFWMD
2. The Lake Fill Project (permit and fill all lakes except Ibis, denoted as such on Exhibit B)
3. Mass Grading and Balancing of Premises (but not individual pad sites), including trash/debris removal and/or compaction to levels approved for development for full site and all excess material, including but not limited to excess material from landfill, completely disposed of offsite
4. The Spine Road extension from the North end of NE 151 Street to and abutting the 143rd Street Intersection at US 1/Highlands Village.
5. All Utility Infrastructure along the Spine Road, including Domestic Water and Fire Flow Supply, Sanitary Sewer, Storm Water Collection and Disposal, Power Supply Corridor, Communications and CATV Raceways, Gas Supply Main and Reuse Irrigation Main (if allowed by Miami-Dade County Regulatory Authority), and Sanitation
6. All daily Landfill Closure Permit and CLCP (except related to the design and construction of the groundwater remediation system) required activities, and including without limitation groundwater monitoring
7. The Park Property Improvements (except for the Delayed Park Property denoted on Exhibit B to this Lease, which will be used initially for a staging area and will, when the surrounding improvements are built, be landscaped and irrigated): water booster station apparatus (if required); construction of a minimum of 1 baseball field, one softball field, 1 multipurpose field, 1 restroom/concession space, 1 playground, 3 picnic shelters, and 2 basketball courts, together with Musco lighting, landscaping and irrigation. The Park Property shall not include the walking and biking trails along the open space on the perimeter of the Premises, which shall be constructed, retained and maintained by Tenant or those claiming under it, but the trails shall be open to the public.
8. A Community Center comparable to or better than the Gwen Margolis Center (including kitchen, restrooms, vendor space), to be owned and maintained by Tenant. Landlord will have free use of the facility at least 3 times a month
9. At least 500,000 square feet of Required Improvements
10. Creation of a homeowner's association or community development district or declaration of covenants and restrictions or similar funding source running with the land included in the Premises for all environmental monitoring and compliance costs under the CLCP as provided in section 9.3.3 of this Lease.

11. Musco lighting will be provided for the Park Property including playing fields and for all dedicated rights of way.

### Definitions and Groundwater Remediation Provisions

9.3.1 *Groundwater Remediation.* Landlord entered into the ERA for the design and construction of the groundwater remediation system required under the CLCP. Landlord shall diligently pursue completion of the groundwater remediation system as provided in the ERA and pursuant to the terms of the Grant Agreement, Landfill Closure Permit, and CLCP. The Parties shall reasonably cooperate and work in good faith with each other in coordinating development of each of their components of the project in order not to unreasonably interfere with each others' construction plans, activities and schedules. Landlord and Tenant shall each designate coordination representatives (collectively, the "Project Coordination Team") and establish a regular meeting schedule beginning within seven (7) days after the Commencement Date, and shall meet no less frequently than weekly until the Substantial Completion of the Initial Development, and thereafter as decided by the Project Coordination Team, to allow representatives to provide applicable reports, plans, and other information, and discuss the progress and coordination of the groundwater remediation system (including horizontal piping and placement of extraction wells) and the Initial Development so as not to unreasonably interfere with each other's work, and address issues and problems that arise in a good faith, collaborative manner. Landlord's initial representative of the Project Coordination Team shall be the City PE, and Tenant's initial representative of the Project Coordination Team shall be \_\_\_\_\_. Tenant shall have the right to observe but not interfere with the work done pursuant to the ERA. If Tenant has concerns regarding the quality, appropriateness, or compliance with Laws, applicable Approvals or the Grant of such work, Tenant shall provide a reasonably detailed written description of such concerns to the City PE, who will evaluate and if necessary after appropriate consultation and investigation, address the concerns in an appropriate manner in the City PE's professional judgment.

"Required Improvements" means a building or buildings, measured in square footage for the purposes of this Lease by the footprint of such building only, and including tenant improvements, tenant interior work and tenant build-out.

"Remedial Action" means the remedial action for Landfill Closure including capping, stormwater management system, groundwater monitoring, methane gas control plan, and other requirements set forth in the CLCP, Landfill Closure Permit, any approved remedial action plan, and related documents, but excluding the design and construction of the groundwater remediation system which is being constructed pursuant to the ERA, and including any investigation, containment, removal, remedy, clean-up, capping, response, abatement, landfill closure, or any other response action (including on-going monitoring obligations and providing financial assurances).

**LEASE AGREEMENT  
WITH OLETA PARTNERS, LLC**

**FOR THE REDEVELOPMENT OF  
THE BISCAYNE LANDING  
PROPERTY**

**PENDING COMPLETION  
WILL BE DISTRIBUTED AT THE  
COUNCIL MEETING**